

ORAL ARGUMENT NOT YET SCHEDULED

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

WHITE STALLION ENERGY CENTER, LLC,
et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

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) Case Nos. 12-1100,
) 12-1176, 12-1177,
) 12-1178, 12-1180,
) 12-1184, 12-1191
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**CHASE POWER DEVELOPMENT, LLC’S RESPONSE TO THE JOINT
MOTION TO SEVER AND EXPEDITE CONSIDERATION OF CERTAIN
ISSUES GERMANE TO NEW UNIT HAZARDOUS AIR POLLUTANT
STANDARDS AND REQUEST TO PARTICIPATE IN BRIEFING**

Petitioner Chase Power Development, LLC (“Chase Power”) (Case No. 12-1191) files this response to the motion filed on April 27, 2012 by petitioners in Case Nos. 12-1100, 12-1176, 12-1177, 12-1178, 12-1180, and 12-1184 (“Movants”)—styled *Joint Motion by Developers of New Solid-Fueled Electric Generating Units to Sever and Expedite Consideration of Issues Germane to Hazardous Air Pollutant Standards Applicable to New Units*. That motion, as modified, seeks to have two issues associated with the Mercury and Air Toxics

Standards rule (“MATS rule”) severed and expedited. Chase Power supports that motion and requests that it be permitted to participate as a petitioner in briefing the issues raised.

Chase Power is similarly situated to Movants. Like those petitioners, Chase Power is developing an electric power generating project that will be subject to the MATS rule standards for new units and, because of the unlawfulness of the MATS rule, Chase Power faces the loss of its project. Chase Power is also similarly situated because it too has expended millions of dollars and many years in project development activities and has obtained a PSD preconstruction air quality permit that contains a deadline for commencement of construction for the new electric generating project it is developing. Accordingly, a delay of one to two years to litigate the MATS rule in the normal course as part of the consolidated case (Case No. 12-1100) risks the continued viability of Chase Power’s project. As a similarly-situated party, Chase Power supports the petitioners’ motion to sever and expedite.

Unlike Movants, however, Chase Power has a unique interest in challenging the MATS rule’s new unit standards. The MATS rule establishes national emission standards for hazardous air pollutants that apply to *coal- and oil*-fired electric utility steam generating units. Movants appear to be developing coal-fired

electric generating projects,¹ while Chase Power's electric generating project will be fueled solely by petroleum coke, an oil-derived fuel. Though all petitioners in the consolidated case have yet to file Statements of Issues, Chase Power believes that it is developing the only 100% petroleum coke-fired units subject to the MATS rule's new unit standards for solid oil-derived fuel. This significant difference makes Chase Power's participation in the severed briefing essential to the ultimate disposition of the issues Movants have requested to sever and expedite. Therefore, Chase Power requests that it be permitted to participate as a petitioner in briefing the issues Movants seek to sever and expedite.

CONCLUSION

Chase Power respectfully requests that the court grant the petitioners' joint motion in Case Nos. 12-1100, 12-1176, 12-1177, 12-1178, 12-1180, and 12-1184 to sever and expedite consideration of certain issues associated with the MATS rule's new unit standards, and requests that it be permitted to participate as a petitioner in briefing the issues raised by Movants.

¹ The motion to sever and expedite filed by the Movants supports this conclusion because the motion focuses on issues confronting new *coal*-fired units subject to the MATS rule's standards. The MATS rule defines *coal*-fired electric utility steam generating units as meaning "an electric utility steam generating unit meeting the definition of 'fossil fuel-fired' that burns coal for more than 10.0 percent of the average annual heat input during any 3 consecutive calendar years or for more than 15.0 percent of the annual heat input during any one calendar year." 77 Fed. Reg. 9,304, 9,484 (Feb. 16, 2012).

Respectfully submitted,

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Dated: May 17, 2012

CERTIFICATE OF SERVICE

I certify that on May 17, 2012, I caused a copy of the foregoing *Response to the Joint Motion to Sever and Expedite Consideration of Certain Issues Germane to New Unit Hazardous Air Pollutant Standards and Request to Participate in Briefing* to be served upon all counsel registered to receive service via the Court's CM/ECF electronic filing system.

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